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04-CV-02052-CMP

FILED
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SEP 29 2004
MR
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED WOOD PRODUCTS
COMPANY, An Oregon Corporation,

Plaintiff,

v.

TRI-STATE CONSTRUCTION, INC., a
Washington Corporation, and THE
CITY OF EVERETT, WASHINGTON a
Municipal Corporation,

Defendants.

CV04-2052

NO.

COMPLAINT FOR DAMAGES

(Negligence, Trespass,
Nuisance)

and DEMAND FOR JURY
TRIAL

Plaintiff United Wood Products Company alleges:

JURISDICTION

1. Plaintiff is a corporation incorporated under the laws of the State of Oregon and having its principal place of business (corporate headquarters) in the State of Oregon.
2. Defendant Tri-State Construction, Inc. ("Tri-State") is a corporation incorporated under the laws of the State of Washington.

ORIGINAL

1 3. Defendant City of Everett, Washington ("Everett") is a municipal corporation
2 incorporated under the laws of the State of Washington.

3 4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332
4 because the parties are diverse, and the amount in controversy exceeds \$75,000 exclusive
5 of interest and costs.

6 5. Venue is proper in this court pursuant to 28 U.S.C. § 1391, as the events and
7 conduct complained of occurred in this district, and all defendants reside in this district.

8 **FIRST CLAIM FOR RELIEF**

9 **(Negligence)**

10 6. At all material times, plaintiff leased land and purchased a wood debris ("hog
11 fuel") processing site operation located at 4000 Railway Avenue, in Everett, Washington,
12 formerly known as Kimberly-Clark Riverside Operations.

13 7. Additionally, at all material times, plaintiff was obligated by contract to process
14 and deliver to Kimberly-Clark between 15,000 to 20,000 tons of hog fuel daily.

15 8. On or about March 14, 2003, defendant Everett entered into a contract with
16 defendant Tri-State to construct an effluent pipeline and transfer pumping station, for the
17 purpose of pumping drainage water to Kimberly-Clark for industrial use in Everett,
18 Washington. The contract required defendant Tri-State to do the following:

- 19 a. Repair and replace all property of others damaged by its employees,
20 subcontractors, suppliers and agents;
21 b. All business driveways to remain open except as necessary for short
22 periods of time;
23 c. At all times conduct work to prevent obstruction and inconvenience of
24 vehicular traffic;
25 d. Give a minimum of 14 days advance notice to plaintiff of work in the area
of Kimberly-Clark Riverside Operations Facility Access Road, provide

1 signals and flaggers as required to redirect vehicular traffic to alternate
2 access points;

3 e. To only close the road for brief periods as required for the work and
4 approved by defendant Everett and Kimberly-Clark;

5 f. Only close one lane on Everett Avenue for up to two weeks, provided two
6 lanes are available for traffic;

7 9. From approximately November 1, 2003, to approximately January 31, 2004,
8 defendant Tri-State was engaged in construction activity in the area of plaintiff's land and
9 hog fuel processing site, and closed the Kimberly-Clark Riverside Operations Facility
10 Access Road, and Everett Avenue, at times simultaneously, making vehicular traffic
11 inaccessible to plaintiff's land and hog fuel processing site.

12 10. Defendant Tri-State's construction activities broke existing water drainage
13 pipes on plaintiff's land, flooding plaintiff's land and hog fuel processing site with water and
14 mud, including flooding plaintiff's weigh scale, and damaging plaintiff's plumbing at its weigh
15 scale and on-site office building.

16 11. Defendant Tri-State's construction activities caused destruction, degradation
17 and overuse of plaintiff's private roads, and limited road access to plaintiff's neighbors'
18 property, making neighbors only access to their property over plaintiff's private roads and
19 property.

20 12. Defendant Tri-State's construction activities caused excessive vehicular traffic
21 over plaintiff's rail spur, causing it to sink and prevented rail deliveries of rail ties used to
22 make creosote grindings that are sold as hog fuel.

23 13. Plaintiff's suppliers of raw materials to make hog fuel were delayed in making
24 deliveries because defendants caused damage to plaintiff's private roads which caused
25 plaintiff and suppliers to experience equipment and vehicular damages.

1 14. Plaintiff incurred extraordinary equipment and vehicular damages, incurs
2 extraordinary repair expenses to its weigh scale, to refortify its private roads and rail spurs,
3 and incurs extraordinary expenses delivering substitute hog fuel and alternative fuels as
4 required by contract.

5 15. Tri-State, through its subcontractors, employees and agents, drove street
6 paving equipment across plaintiff's weigh scale causing damage to the weigh scale, and
7 plaintiff's suppliers were delayed in making deliveries due to damaged weigh scale.

8 16. Tri-State and Everett failed to use due care in designing, implementing and
9 constructing an effluent pipeline in and around plaintiff's land and hog fuel processing site,
10 causing direct and circumstantial economic damages.

11 17. As a proximate result of defendants' negligence, plaintiff suffered property
12 damages, vehicular and equipment damages, extraordinary expenses in recalibrating and
13 cleaning plaintiff's weigh scale, repairing and maintaining plaintiff's private roads, repairing
14 the rail spur, cost of equipment downtime, loss of inventory, increased labor costs to repair
15 roads, vehicles and equipment, costs of substitute hog fuel and alternative fuel, costs of
16 substitute transportation, and loss of profits. Plaintiff will incur future damages for repair of
17 land, equipment and the on-site office building.

18 **SECOND CLAIM FOR RELIEF**

19 **(Trespass)**

20 18. Paragraphs 1 – 17 are incorporated herein by reference.

21 19. Tri-State knew, or had substantial reason to know, that the area around
22 plaintiff's weigh scale and rail spur (which are on the opposite side of a cyclone fence
23 adjacent to Kimberly-Clark Riverside Operations Facility Access Road) were private
24 property.
25

1 20. Tri-State allowed its subcontractors, agents and employees to place its
2 equipment (including its street paving equipment), trucks and cars onto plaintiff's private
3 property without plaintiff's consent or prior knowledge.

4 21. As a proximate result of defendant's Tri-State's trespassing, plaintiff suffered
5 property damages, vehicular and equipment damages, extraordinary expenses in
6 recalibrating and cleaning plaintiff's weigh scale, repairing and maintaining plaintiff's private
7 roads, repairing the rail spur, cost of equipment downtime, loss of inventory, increased labor
8 costs to repair roads, vehicles and equipment, costs of substitute hog fuel and alternative
9 fuel, costs of substitute transportation, and loss of profits. Plaintiff will incur future damages
10 for repair of land, equipment and the on-site office building.

11 THIRD CLAIM FOR RELIEF

12 (Nuisance)

13 22. Paragraphs 1 – 21 are incorporated herein by reference.

14 23. Tri-State activities upon and around plaintiff's land and hog fuel processing
15 site, created a condition tending to both cause damage to plaintiff's property and created a
16 danger of future damage. In light of the condition thereby created, defendant Tri-State's
17 improper use of plaintiff's property cannot be considered lawful or reasonable, but rather
18 constitutes a nuisance.

19 24. As a proximate result of defendant Tri-State's nuisance, plaintiff suffered
20 property damages, vehicular and equipment damages, extraordinary expenses in
21 recalibrating and cleaning plaintiff's weigh scale, repairing and maintaining plaintiff's private
22 roads, repairing the rail spur, cost of equipment downtime, loss of inventory, increased labor
23 costs to repair roads, vehicles and equipment, costs of substitute hog fuel and alternative
24 fuel, costs of substitute transportation, and loss of profits. Plaintiff will incur future damages
25 for repair of land, equipment and the on-site office building.

FOURTH CLAIM FOR RELIEF

(Breach of Contract)

25. Plaintiff reincorporates the allegations set forth in paragraphs 1 through 24 above.

26. The contract between Tri-State and the City of Everett was entered into for the benefit of third parties, including plaintiff and its neighbors. Tri-State breached the contract, including but not limited to the following:

- a. Failing to repair and replace all property of plaintiff damaged by its employees, subcontractors, suppliers and agents;
- b. Failing to keep all business driveways open except as necessary for short periods of time;
- c. Failing at all times to conduct work to prevent obstruction and inconvenience to vehicular traffic;
- d. Failing to give a minimum of 14 days advance notice to plaintiff of work in the area of Kimberly-Clark Riverside Operations Facility Access Road and failing to provide signals and flaggers as required to redirect vehicular traffic to alternate and legal access points;
- e. Failing to close the road for brief periods as required for the work and approved by defendant Everett and Kimberly-Clark;
- f. Closing more than one lane on Everett Avenue for more than two weeks and failing to provide that two lanes were available for traffic.

27. Plaintiff has been damaged by Tri-States actions in an amount to be proven at trial.

PRAYER FOR RELIEF

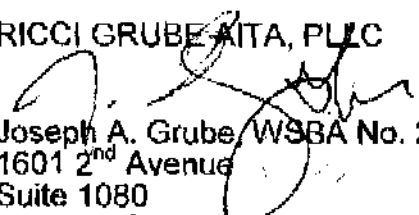
WHEREFORE, plaintiff requests that this court:

- a. Award economic damages for property damages, vehicular and equipment damages, to compensate for extraordinary expenses incurred in recalibrating and cleaning plaintiff's weigh scale, to compensate for repairs and maintenance to private roads, to compensate for repairs to the rail spur, to compensate for equipment downtime, loss of inventory, to compensate for increased labor costs to repair and maintain roads, vehicles and equipment, to compensate for costs of substitute hog fuel and alternative fuel, costs of substitute transportation, and lost profits in an amount awarded by this Court or jury.
- b. Award economic damages for future repair of the land, equipment, weigh station, and on-site office building in an amount awarded by this Court or jury.
- c. Award such other costs incurred in this action.
- d. Award such other and further relief as this Court may deem appropriate

A jury trial is hereby demanded.

RESPECTFULLY SUBMITTED this 29th day of September, 2004.

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